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of the State of California
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3 California Department of Justice
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6 Attorneys for Complainant
7

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

13 Valentin Garcia Lopez, Jr.
21450 Chase Street, Apt. 143,
Canoga Park, California 91304

14 Respondent.
15

Case No. 2008-180

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

16 FINDINGS OF FACT
17

18 1. On or about January 18, 2008, Complainant Ruth Ann Terry, M.P.H., R.N.
19 in her official capacity as the Executive Officer of the Board of Registered Nursing, Department
20 of Consumer Affairs, filed a First Amended Statement of Issues No. 2008-180 against Valentin
21 Garcia Lopez, Jr. (Respondent) before the Board of Registered Nursing.

22 2. On or about June 26, 2001, Respondent filed an application dated with the
23 Board to obtain a registered nursing license.

24 3. On or about March 12, 2007, the Board issued a letter denying
25 Respondent's application for a registered nursing license. On or about April 4, 2007, Respondent
26 appealed the Board's denial of his application and requested a hearing.

27 4. On or about July 9, 2007, Respondent wrote to the Board stating that if the
28 Attorney General and the Board determined that a hearing before an Administrative Law Judge is

1 required to determine his eligibility for licensure and decided not to pursue a stipulated
2 agreement, then Respondent was withdrawing his appeal and waiving his right to a hearing on
3 his application for licensure.

4 5. On or about January 31, 2008, Constance Ward, an employee of the Office
5 of the Attorney General, Department of Justice, State of California, served by Certified and also
6 First Class Mail, a copy of the First Amended Statement of Issues No. 2008-180, Statement to
7 Respondent, Notice of Defense, and Request for Discovery to Respondent's address then of
8 record with the Board. A copy of the First Amended Statement of Issues is attached as Exhibit A
9 and incorporated herein by reference.

10 6. On or about February 14, 2008, Scotty Jorgensen, an employee of the
11 Office of the Attorney General, Department of Justice, State of California, served by Certified
12 and also First Class Mail, a copy of the First Amended Statement of Issues No. 2008-180,
13 Statement to Respondent, Notice of Defense, and Request for Discovery to Respondent at 21450
14 Chase Street, Apartment 143, Canoga Park, California 91304.

15 7. On or about March 7, 2008, Scotty Jorgensen, an employee of the Office
16 of the Attorney General, Department of Justice, State of California, served by Certified and also
17 First Class Mail, a copy of the First Amended Statement of Issues No. 2008-180, Statement to
18 Respondent, Notice of Defense, and Request for Discovery to Respondent at 305 Rio Grande
19 Avenue, Hutto, Texas 78634.

20 8. Service of the First Amended Statement of Issues was effective as a matter
21 of law under the provisions of Government Code section 11505, subdivision (c).

22 9. On or about February 23, 2008, the documents described in Paragraph 6
23 above were returned by the U.S. Postal Service marked "Unable to Forward, Return to
24 Postmaster of Addressee for Review."

25 10. Government Code section 11506 states, in pertinent part:

26 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
27 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
28 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of

1 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

2 11. California Government Code section 11520 states, in pertinent part:

3 "(a) If the respondent either fails to file a notice of defense or to appear at the
4 hearing, the agency may take action based upon the respondent's express admissions or upon
5 other evidence and affidavits may be used as evidence without any notice to respondent."

6 12. Pursuant to its authority under Government Code section 11520, the Board
7 finds Respondent in default. The Board will take action without further hearing and, based upon
8 respondent's express admissions by way of default and the evidence before it, contained in
9 Exhibits A and B, finds that the allegations, and each of them, in Statement of Issues No. , are
10 true.

11 DETERMINATION OF ISSUES

12 1. Based on the foregoing findings of fact, Respondent has subjected his
13 application for a registered nursing license to denial.

14 2. Service of Statement of Issues No. 2008-180 and related documents was
15 proper and in accordance with the law.

16 3. Respondent notified the Board in writing that if the Board elected to
17 proceed with a hearing before an Administrative Law Judge his eligibility for licensure and
18 decided not to pursue a stipulated agreement, then he was withdrawing his appeal and waiving
19 his right to a hearing on his application for licensure. The Board did elect not to pursue a
20 stipulated agreement and instead, to proceed with a hearing before an Administrative Law Judge.

21 3. The agency has jurisdiction to adjudicate this case by default.

22 4. The Board of Registered Nursing is authorized to deny Respondent's
23 application for licensure based upon the following violations alleged in the Statement of Issues:

24 a. Business and Professions Code sections 2736(a)(3), 480(a)(1) and
25 2761(f) for Respondent's conviction of five counts of violating Penal Code 487(a) (grand
26 theft of personal property), one count of violation of Penal Code section 530.5(a) (identity
27 theft), one count of violating Penal Code section 1320(b) (failure to appear on own
28 recognizance), five counts of violating Corporations Code section 25110 (offer to sell

1 security without qualification) and five counts of violating Corporations Code section
2 25401 (offer or sale of security), all felonies and crimes substantially related to the
3 qualifications, functions and duties of a licensee.

4 b. Business and Professions Code sections 2736(a)(3) and 480(a)(2),
5 by Respondent's convictions described in sub-part 4(a), as they involve acts of dishonesty, fraud
6 or deceit with the intent to substantially benefit Respondent, or another, or to substantially injure
7 another.

8 c. Business and Professions Code sections 2736(a)(3) and 480(a)(3)
9 by Respondent's convictions described in sub-part (a)(4), which are substantially related to the
10 qualifications, functions and duties, and are acts that if committed by a licensee would have
11 subjected that licensee to suspension or revocation under Business and Professions Code section
12 2761(f).

13 d. Business and Professions Code section 2761(a)(4) in that
14 Respondent was disciplined by the California Board of Vocational Nursing and Psychiatric
15 Technicians by revocation of Respondent's Vocational Nursing License VN 207143 effective on
16 April 1, 2007, based upon Respondent's convictions described in sub-part 4(a) above.

17 ORDER

18 IT IS SO ORDERED that the application of Respondent Valentin Garcia Lopez,
19 Jr. is hereby denied.

20 Pursuant to Government Code section 11520, subdivision (c), Respondent may
21 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
22 within seven (7) days after service of the Decision on Respondent. The agency in its discretion

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1 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
2 statute.

3 This Decision shall become effective on AUGUST 9, 2008.

4 It is so ORDERED JULY 9, 2008

5 *LaTranene W Tate*

6 FOR THE BOARD OF REGISTERED NURSING
7 DEPARTMENT OF CONSUMER AFFAIRS

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10 Default and Order.wpd
11 DOJ docket number:SA2005104120

12 **Attachments:**

13 Exhibit A: First Amended Statement of Issues No. 2008-180
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Exhibit A

First Amended Statement of Issues No. 2008-180

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ARTHUR TAGGART
Lead Supervising Deputy Attorney General
3 STERLING A. SMITH, State Bar No. 84287
Deputy Attorney General
4 California Department of Justice
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 323-3795
Facsimile: (916) 324-5567

7 Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the First Amended Statement of
12 Issues Against:

Case No. 2008-180

13 **VALENTIN GARCIA LOPEZ, JR.**
CDC #V98071
14 GYM - 137 UP
P. O. Box 2400
15 Susanville, CA 96127-2400

FIRST AMENDED
STATEMENT OF ISSUES

16 Applicant/Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this First Statement
20 of Issues solely in her official capacity as the Executive Officer of the Board of Registered
21 Nursing, Department of Consumer Affairs.

22 2. Valentin Garcia Lopez, Jr. On or about June 26, 2001, the Board
23 of Registered Nursing ("Board") received an Application for Licensure by Examination
24 from Valentin Garcia Lopez, Jr. ("Applicant/Respondent"). On or about April 24, 2001,
25 Applicant/Respondent certified under penalty of perjury to the truthfulness of all statements,
26 answers, and representations in the application. The Board denied the application on
27 March 12, 2007.

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JURISDICTION

3. Section 2736 of the Business and Professions Code ("Code") provides, in pertinent part:

(a) An applicant for licensure as a registered nurse shall comply with each of the following:

(3) Not be subject to denial of licensure under Section 480.

STATUTORY PROVISIONS

4. Code section 480 provides, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

5. Code section 2761 provides, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California

1 health care professional licensing board. A certified copy of the
2 decision or judgment shall be conclusive evidence of that action.

3 (f) Conviction of a felony or of any offense substantially
4 related to the qualifications, functions, and duties of a registered
5 nurse, in which event the record of the conviction shall be
6 conclusive evidence thereof.

7 **REGULATORY PROVISIONS**

8 6. California Code of Regulations, title 16, section 1444, provides, in
9 pertinent part:

10 A conviction or act shall be considered to be substantially
11 related to the qualifications, functions or duties of a registered
12 nurse if to a substantial degree it evidences the present or potential
13 unfitness of a registered nurse to practice in a manner consistent
14 with the public health, safety, or welfare.

15 **FIRST GROUND FOR DENIAL OF LICENSURE**

16 (Conviction of Crime)

17 7. Grounds exist to deny the application of Applicant/Respondent
18 under Code sections 2736, subdivision (a)(3), 480, subdivision (a)(1), and 2761, subdivision (f),
19 in that on or about June 29, 2005, in the case entitled, *People v. Valentin Garcia Lopez, Jr.*
20 (Super. Ct. Ventura County, 2005, No. 2004100136), Applicant/Respondent was convicted by
21 the court upon a plea of guilty of five counts of violating Penal Code section 487, subdivision (a)
22 (grand theft of personal property); one count of violating Penal Code section 530.5, subdivision
23 (a) (identity theft); one count of violating Penal Code section 1320, subdivision (b) (failure to
24 appear on own recognizance); five counts of violating Corporations Code section 25110 (offer to
25 sell security without qualification); and, five counts of violating Corporations Code section
26 25401 (offer or sale of security), all felonies and crimes substantially related to the qualifications,
27 functions or duties of a licensee within the meaning of California Code of Regulations, title 16,
28 section 1444.

8. The circumstances of the convictions are as follows:

a. On or about October 1, 2003, through September 11, 2004,
Applicant/Respondent unlawfully took money and personal property of a value exceeding Four
Hundred Dollars (\$400), to wit: money, the property of another. (Pen. Code, § 487, subd. (a).)

1 b. On or about August 2, 2004, through September 17, 2004,
2 Applicant/Respondent willfully and unlawfully obtained personal identifying information on
3 S. W. without authorization, and used that information for an unlawful purpose and to obtain,
4 and attempt to obtain, credit, goods and services and medical information in the name of S. W.
5 without consent. (Pen. Code, § 530.5, subd. (a).)

6 c. On or about October 25, 2004, Applicant/Respondent, who
7 was charged the commission of a felony and who was released from custody on his own
8 recognizance, and who in order to evade the process of the court, willfully failed to appear
9 as required. (Pen. Code, § 1320, subd. (b).)

10 d. On or about July 10, 2003, through on or about October 25, 2003,
11 Applicant/Respondent unlawfully offered or sold in this state a security in an issuer
12 transaction. (Corp. Code, § 25110.)

13 e. On or about July 10, 2003, through on or about November 1, 2003,
14 Applicant/Respondent unlawfully offered or sold a security in this state, or bought, or offered
15 to buy a security in this state by means of a written or oral communication which included
16 an untrue statement of a material fact, or omitted to state a material fact necessary in order to
17 make the statements made, in light of the circumstances under which they were made,
18 not misleading. (Corp. Code, § 25401.)

19 **SECOND GROUND FOR DENIAL OF LICENSURE**

20 (Commission of Dishonest, Fraudulent, or Deceitful Acts)

21 9. Grounds exist to deny the application of Applicant/Respondent
22 under Code section 2736, subdivision (a)(3), and Code section 480, subdivision (a)(2), in
23 that, as more particularly set forth under paragraphs 7 and 8, above, Applicant/Respondent
24 committed acts involving dishonesty, fraud, or deceit with the intent to substantially benefit
25 Applicant/Respondent, or another, or to substantially injure another.

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1 **THIRD GROUND FOR DENIAL OF LICENSURE**

2 (Acts as Grounds for Suspension or Revocation of a License)

3 10. Grounds exist to deny the application of Applicant/Respondent under
4 Code sections 2736, subdivision (a)(3), and 480, subdivision (a)(3), in that, as more particularly
5 set forth under paragraphs 7 and 8, above, Applicant/Respondent was convicted of crimes
6 substantially related to the qualifications, functions or duties of a licensee, acts which if
7 committed by a licensee would have subjected that license to suspension or revocation
8 under Code section 2761, subdivision (f) (conviction of crime).

9 **FOURTH GROUND FOR DENIAL OF LICENSURE**

10 (Discipline by Another California Health Care Professional Licensing Board)

11 11. Grounds exist to deny the application of Applicant/Respondent under
12 Code section 2761, subdivision (a)(4), in that Respondent has been disciplined by The California
13 Board of Vocational Nursing and Psychiatric Technicians (hereafter "LVN Board"). Effective
14 April 1, 2007, pursuant to the Decision and Order filed by the LVN Board, attached hereto as
15 **Exhibit "A"** and incorporated herein, Respondent's California Vocational Nurse License
16 Number VN 207143 was revoked. The basis for discipline was that Respondent had been
17 convicted of crimes substantially related to the qualifications, functions, and duties of a licensed
18 vocational nurse, as more particularly set forth in paragraphs 7 and 8, subparagraphs a through e,
19 above.

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1 **PRAYER**

2 **WHEREFORE**, Complainant requests that a hearing be held on the matters
3 herein alleged, and that following the hearing the Board issue a decision:

- 4 1. Denying the application of Valentin Garcia Lopez, Jr. for a registered
5 nurse license; and,
6 2. Taking such other and further action as deemed necessary and proper.

7
8 **DATED:** 1/15/08

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11 RUTH ANN TERRY, M.P.H., R.N.
12 Executive Officer
13 Board of Registered Nursing
14 Department of Consumer Affairs
15 State of California
16 Complainant
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**BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS**

2535 CAPITOL OAKS DRIVE, SUITE 205
SACRAMENTO, CALIFORNIA 95833-2945
TELEPHONE (916) 263-7800; FAX (916) 263-7855
INTERNET ADDRESS: <http://www.bvnpt.ca.gov>

**CERTIFIED MAIL**

March 27, 2007

Valentin Lopez, Jr.
CDC #V-98071
Valley View Conservation Camp #34
PO Box 8
Elk Creek, CA 95939-0008

Dear Mr. Lopez:

Your petition for reconsideration of the Board of Vocational Nursing and Psychiatric Technicians' Decision to revoke your vocational nurse license, number VN 207143, is denied. Your license is revoked effective April 1, 2007.

Sincerely,

A handwritten signature in cursive script that reads 'Angelina Martin'.

Angelina Martin
Program Manager

Enclosure

cc: Karen J. Brandt, Administrative Law Judge
Geoffrey S. Allen, Deputy Attorney General

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BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

Case No. 6873

VALENTIN LOPEZ, JR.
CDC #V-98071
Valley View Conservation Camp #34
PO Box 8
Elk Creek, CA 95939-0008

Vocation Nurse License No. VN 207143

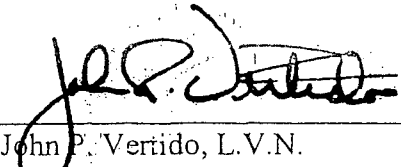
Respondent.

DECISION

The Board of Vocational Nursing and Psychiatric Technicians hereby denies your
Petition for Reconsideration of its March 22, 2007 Decision in the above-entitled matter.

This Decision shall become effective on April 1, 2007.

IT IS SO ORDERED this 27TH day of March, 2007.



John P. Vertido, L.V.N.
President

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

Case No. 6873

VALENTIN G. LOPEZ, JR.
CDC #V-98071
Valley View Conservation Camp #34
PO Box 8
Elk Creek, CA 95939-0008

Vocational Nurse License N^o. VN 207143

Respondent.

ORDER DELAYING DECISION

Pursuant to Section 11521(a) of the Government Code, the Board of Vocational Nursing and Psychiatric Technicians (Board) hereby issues this Order Delaying Decision in the above-stated case until April 1, 2007. The purpose of the delay is to permit the Board to review your Petition for Reconsideration.

IT IS SO ORDERED this 26TH day of February, 2007.

John P. Vertido, L.V.N.
President

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BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

Case No. 6873

VALENTIN G. LOPEZ, JR.
CDC #V-98071
Valley View Conservation Camp #34
P.O. Box 8
Elk Creek, CA 95939-0008

OAH No. N2006080471

Vocational Nurse License No. VN 207143

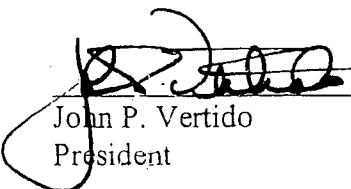
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted
by the Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the
above entitled matter.

This Decision shall become effective on March 22, 2007.

IT IS SO ORDERED this 20TH day of February, 2007.



John P. Vertido
President

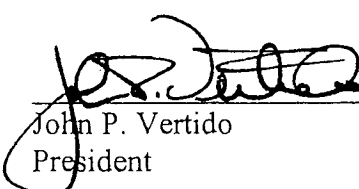
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2 **BEFORE THE**
3 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
4 **DEPARTMENT OF CONSUMER AFFAIRS**
5 **STATE OF CALIFORNIA**

6 In the Matter of the Accusation Against:)
7) **Case No. 6873**
8 VALENTIN G. LOPEZ, JR.)
9 CDC #V-98071) **OAH No. N2006080471**
10 Valley View Conservation Camp #34) **ORDER NUNC PRO TUNC**
11 P.O. Box 8)
12 Elk Creek, CA 95939-0008)
13 Respondent.)
14 _____)

15 The Decision in the above-entitled matter, dated February 1, 2007, was served at 305
16 Rio Grande Avenue, Hutto, Texas, 78634, the Respondent's former address.

17 Good cause appearing, the Decision is hereby vacated nunc pro tunc and re-issued for
18 proper service.

19 IT IS SO ORDERED this 20TH day of February, 2007.

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22 John P. Vertido
23 President
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BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

Case No. 6873

VALENTIN LOPEZ, JR.
305 Rio Grande Avenue
Hutto, TX 78634

OAH No. N2006080471

Vocational Nurse License
No. VN 207143

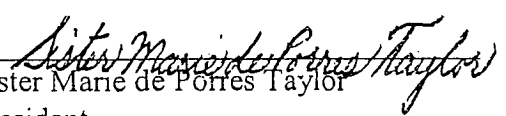
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled matter.

This Decision shall become effective on March 3, 2007.

IT IS SO ORDERED this 1ST day of February, 2007.


Sister Marie de Porres Taylor
President

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

VALENTIN GARCIA LOPEZ, Jr.
305 Rio Grande Avenue
Hutto, Texas 78634

Vocational Nurse License No. VN 207143

Respondent.

Case No. 6873

OAH No. N2006080471

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on October 23, 2006, in Elk Creek, California.

Geoffrey S. Allen, Deputy Attorney General, represented Teresa Bello-Jones, J.D., M.S.N., R.N. (complainant), Executive Officer, Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, State of California.

Valentin Garcia Lopez, Jr. (respondent) appeared on his own behalf.

Evidence was received, the record was initially closed, and the matter was initially submitted on October 23, 2006. On October 31, 2006, the Administrative Law Judge issued an order, which reopened the record sua sponte and requested that the Deputy Attorney General submit detailed information describing the tasks performed by the Deputy Attorneys General and Legal Assistants who worked on this matter and the time spent on each task, in accordance with California Code of Regulations, title 1, section 1042, subdivision (b)(2). On November 13, 2006, the Deputy Attorney General submitted a Certification of Prosecution Costs: Supplemental Declaration of Geoffrey S. Allen, which was marked for identification as Exhibit 10 and admitted into evidence. The Deputy Attorney General also submitted a Certification of Prosecution Costs: Memorandum of Points and Authorities, which was marked for identification as Exhibit 11. Respondent was given an opportunity to file an objection to Exhibits 10 and 11. Respondent filed a letter dated November 20, 2006 and received on November 28, 2006, which stated that he would respect the decision of the

Administrative Law Judge on the issue of costs. Respondent's letter was marked for identification as Exhibit B. The record was closed and the matter was submitted on November 28, 2006.

FACTUAL FINDINGS

1. Complainant made and filed the Accusation in her official capacity.
2. On December 8, 2003, the Board issued vocational nurse license number VN 207143 to respondent. That license expired on October 31, 2005.
3. On June 29, 2005, in the Superior Court of California, County of Ventura, in Case No. 2004100136, respondent, upon a plea of guilty, was convicted of the following crimes, all of which were felonies:
 - a. Five counts of violating Penal Code section 487, subdivision (a), (grand theft of personal property of a value greater than \$400.00). These five counts were subject to enhancements for violating Penal Code sections 186.11, subdivision (a)(1), (committing multiple felonies, a material element of which is fraud, which involved a pattern of taking more than \$100,000); and 12022.6, subdivision (a)(1), (taking property of greater value than \$50,000). These five counts were also subject to Penal Code section 1203.045, subdivision (a), (denial of probation for theft over \$100,000).
 - b. One count of violating Penal Code section 530.5, subdivision (a), (identity theft).
 - c. One count of violating Penal Code section 1320, subdivision (b), (failure to appear on own recognizance).
 - d. Five counts of violating Corporations Code section 25110 (offer to sell securities without qualifications).
 - e. Five counts of violating Corporations Code section 25401 (offer to sell securities by untrue statements).
4. The circumstances underlying respondent's convictions were as follows: respondent and another person told certain individuals that they were nurses and asked those individuals to invest in a business that respondent asserted he was going to start called Archangel Hospice, Inc. Respondent used the invested funds for personal items and expenses, and not for the business purposes for which they were invested. Respondent's wrongful acts occurred between October 2003 and September 2004.

5. Respondent was sentenced to serve five years and eight months in state prison. He was given credit for 468 days time served. In addition to fines, respondent was ordered to pay restitution totaling more than \$150,000.

6. At the time of the hearing, respondent was serving his sentence in Valley View Conservation Camp. According to respondent, his parole date is May 27, 2007.

7. At hearing, respondent submitted a letter in which he accepted full responsibility for his actions and expressed his apology and regret. According to respondent, when he was practicing as a vocational nurse, he took care of elderly patients whose families had abandoned them. He asserted that he performed his vocational nursing duties well. He also asserted that he had learned from his mistakes and incarceration, had been rehabilitated, and would not repeat his wrongdoing. He asserted further that he assists and advises his fellow inmates who have small injuries and wounds. He requested that he be allowed to retain his license. He promised that if he could continue to work as a licensed vocational nurse after he is released from incarceration, he would pay full restitution to his victims.

8. Respondent did not present any supporting evidence to substantiate that he has engaged in significant rehabilitation efforts since his convictions. He did not offer any testimony or submit any letters of support from persons familiar with his convictions and the changes he has made in his life since his convictions. While respondent expressed remorse and promised he would refrain from criminal conduct in the future, he did not submit sufficient evidence to provide adequate assurances that he would not repeat his wrongdoing.

9. Pursuant to Business and Professions Code section 125.3, at hearing the Deputy Attorney General submitted a declaration that requested costs of prosecution in the total amount of \$6,691.00. This total amount consisted of the following amounts:

a. \$5,427.00 reported through October 17, 2006, which the Department of Justice had or would bill the Board. This amount consisted of 10.50 hours of Deputy Attorney General time incurred in fiscal year 2005-06 at \$146.00 per hour; 13 hours of Deputy Attorney General time incurred in fiscal year 2006-07 at \$158.00 per hour; and 20.00 hours of Legal Assistant time incurred in Fiscal Year 2005-06 at \$92.00 per hour.

b. \$1,264.00, which was a good faith estimate of eight additional hours of Deputy Attorney General time that was incurred after October 17, 2006 and would be billed to the Board for further preparation of the case up to the commencement of the hearing.

According to the Deputy Attorney General's declaration, time was spent on a number of tasks, including conducting an initial case evaluation; obtaining, reading and reviewing the investigative material and requesting further investigation, as needed; drafting pleadings, subpoenas, correspondence, memoranda, and other case-related documents; researching relevant points of law and fact; consulting and/or meeting with colleague deputies,

supervisory staff, experts, client staff, and investigators; communicating and corresponding with respondent; requesting discovery; and preparing for hearing.

The declaration of the Deputy Attorney General indicated that two Deputy Attorneys General and a Supervising Deputy Attorney General worked on this matter.

10. At hearing, respondent stated that he was willing to pay the full amount of any costs that might be assessed. He asserted, however, that he was unable to pay any costs while he was incarcerated, and requested that he be allowed to keep his license so that he could work after he was released in order to pay the assessed costs. Respondent did not offer any evidence as to his financial ability to make later payments.

11. Prior to hearing, complainant opposed two prehearing requests for continuances. At hearing, the only evidence the Deputy Attorney General offered against respondent were copies of court and police records. The Deputy Attorney General did not call any witnesses or conduct any cross-examination of respondent. The Deputy Attorney General's declaration did not explain whether and to what extent there may have been overlap between the two Deputy Attorneys General who worked on this case. The declaration also did not include any time sheets or time entries, or delineate with particularity the time spent by the Deputy Attorneys General and the Legal Assistants on any specific tasks. Given the nature of the evidence offered in this matter and the documents prepared by the Deputy Attorney General included in the file, there was not enough information presented at hearing to support the 51.5 total hours of time, either billed or requested. In light of these factors, the Deputy Attorney General was ordered to submit detailed information describing the tasks performed by the Deputy Attorneys General and Legal Assistants who worked on this matter and the time spent on each task, in accordance with California Code of Regulations, title 1, section 1042, subdivision (b)(2).

12. In compliance with the order, the Deputy Attorney General submitted a supplemental declaration. Respondent did not object to the supplemental declaration. According to the supplemental declaration, the Board has been billed a total of \$6,770.00 for work performed by Deputy Attorneys General and Legal Assistants. The detailed information submitted with the supplemental declaration indicates that the two Deputy Attorneys General who worked on this matter both recorded time spent on, among other things, case evaluation/assessment, case management, and document analysis. It would not be appropriate to charge respondent for any time spent on these activities that appears to be duplicative. The amount of \$766.50 should, therefore, be deducted from the total amount billed in this matter. Given the supplemental information submitted by the Deputy Attorney General, the reasonable costs of investigation and prosecution are determined to be \$6,003.50.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2875 provides that the Board may discipline a holder of a vocational nurse license for any reason set forth in Article 3 (commencing with Business and Professions Code section 2875) of the Vocational Nursing Practice Act, Business and Professions Code section 2840 et seq.

2. Pursuant to Business and Professions Code section 118, subdivision (b), the expiration of a vocational nurse license does not deprive the Board of jurisdiction to proceed with disciplinary action upon any ground provided by law during any period in which the license may be renewed, restored, reissued or reinstated.

3. Pursuant to Business and Professions Code section 2878, the Board may suspend or revoke a vocational nurse license for:

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

[¶]...[¶]

(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee.

Pursuant to Business and Professions Code section 490, the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the business or profession for which the license was issued.

California Code of Regulations, title 16, section 2521, in relevant part, provides that a crime:

shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

[¶]...[¶]

(e) Conviction of a crime involving fiscal dishonesty.

4. Given the facts set forth in Factual Findings 3 and 4, respondent's convictions, to a substantial degree, evidence his present and potential unfitness to perform the functions of a licensed vocational nurse in a manner consistent with the public health, safety, and welfare. In addition, respondent's convictions were for crimes involving financial dishonesty. Respondent's convictions are, therefore, substantially related to the qualifications, functions and duties of a licensed vocational nurse and establish cause to discipline his license pursuant to Business and Professions Code sections 490 and 2878, subdivision (f), in conjunction with California Code of Regulations, title 16, section 2521, subdivision (e).

5. Respondent's convictions were for dishonest actions related to the duties and functions of respondent as a licensee. Respondent's convictions, therefore, establish cause to discipline his license pursuant to Business and Professions Code section 2878, subdivision (j).

6. In its Disciplinary Guidelines, the Board has set forth the following criteria for determining whether a licensee who has been convicted of a crime has been sufficiently rehabilitated to support the retention of a license:

- Nature and severity of the act(s), offenses, or crimes under consideration.
- Actual or potential harm to the public.
- Actual or potential harm to any patient.
- Prior disciplinary record.
- Prior warnings on record or prior remediation.
- Number and/or variety of current violations.
- Mitigation evidence.
- Rehabilitation evidence.
- In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- Overall criminal record.
- Time passed since the acts or offenses occurred.
- If applicable, evidence of expungment proceedings pursuant to Penal Code Section 1203.4.

The nature and severity of respondent's crimes were significant. Respondent used his position as a licensee to obtain monies by fraudulent means. His dishonest acts caused serious financial loss to his investors. Respondent was licensed in 2003. His wrongdoing occurred in 2003 and 2004. He was convicted in June 2005. He is currently incarcerated. He is not scheduled to be released until May 2007. He did not present any evidence in

mitigation and very little evidence of rehabilitation. Although respondent expressed his apologies to the Board and promised that he would not commit any criminal acts in the future, given the nature, significance and recency of respondent's convictions, it would not be consistent with the Department's Guidelines or the public interest and welfare to allow respondent to retain a vocational nurse license.

7. Pursuant to Business and Professions Code section 125.3, subdivision (a), an administrative law judge may direct a licensee found to have violated the licensing act to "pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." Business and Professions Code section 125.3, subdivision (c) provides that a "certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General." Business and Professions Code section 125.3, subdivision (d) provides:

The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth the following factors to be considered in determining the reasonableness of the costs sought pursuant to regulatory and statutory provisions like Business and Professions Code section 125.3:

The Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that regulation 317.5 does not deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing. Thus, the Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a chiropractor who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. The Board must consider the chiropractor's "subjective good faith belief in the merits of his or her position" [citation] and whether the chiropractor has raised a "colorable challenge" to the proposed discipline [citation]. Furthermore, as in cost recoupment schemes in which the government seeks to recover from

criminal defendants the cost of their state-provided legal representation [citation], the Board must determine that the chiropractor will be financially able to make later payments. Finally, the Board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a chiropractor engaged in relatively innocuous misconduct.

Respondent was not successful in getting any of the charges included in the Accusation dismissed. He did not raise a colorable challenge to the proposed discipline. Although respondent asserted that he would not be able to pay any costs until he was released from incarceration, he did not offer any evidence as to his financial ability to make later payments. As set forth in Factual Finding 12, the reasonable costs of investigation and prosecution are \$6,003.50.

ORDER

1. The vocational nurse license number VN 207143, issued to respondent, Valentin Garcia Lopez, Jr., is hereby REVOKED.

2. Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$6,003.50.

DATED: November 29, 2006



KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings

Exhibit "A"
Accusation No. 6873

1 BILL LOCKYER, Attorney General
of the State of California
2 SCOTT J. HARRIS, State Bar No. 238437
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-2554
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

7 **BEFORE THE**
8 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 6873

11 VALENTIN GARCIA LOPEZ, JR.
305 Rio Grande Avenue
12 Hutto, Texas 78634

A C C U S A T I O N

13 Vocational Nurse License No. VN 207143

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

18 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
19 Accusation solely in her official capacity as the Executive Officer of the Board of Vocational
20 Nursing and Psychiatric Technicians, Department of Consumer Affairs (Board).

21 2. On or about December 8, 2003, the Board issued Vocational Nurse
22 License No. VN 207143 to Valentin Garcia Lopez, Jr. (Respondent). The Vocational Nurse
23 License was in full force and effect at all times relevant to the charges brought herein and
24 expired on October 31, 2005, and has not been renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board, under the authority of
27 the following laws. All section references are to the Business and Professions Code unless
28 otherwise indicated.

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1 functions or duties of a licensed vocational nurse if to a substantial degree it evidences
2 present or potential unfitness of a licensed vocational nurse to perform the functions
3 authorized by the license in a manner consistent with the public health, safety, or welfare.
4 Such crimes or acts shall include, but not be limited to those involving the following:

5 ...
6 “(e) Conviction of a crime involving fiscal dishonesty.”

7 9. Section 125.3 provides, in pertinent part, that the Board may request
8 the administrative law judge to direct a licensee found to have committed a violation or
9 violations of the licensing act to pay a sum not to exceed the reasonable costs of the
10 investigation and enforcement of the case.

11
12 FIRST CAUSE FOR DISCIPLINE

13 (Conviction of Substantially Related Crimes)

14 10. Respondent is subject to disciplinary action under Business and
15 Professions Code sections 490 and 2878, subdivision (f), in conjunction with California
16 Code of Regulations, title 16 section 2521, subdivision (e), in that Respondent was
17 convicted of substantially related crimes involving fiscal dishonesty. The circumstances are
18 as follows:

19 a. On or about June 29, 2005, Respondent was convicted in the
20 Superior Court of California, County of Ventura, Case No. 2004100136, entitled *The People*
21 *of the State of California v. Valentin Garcia Lopez, Jr.* of the following crimes:

22 1. Five counts of violating Penal Code section 487, subdivision
23 (a), a felony, (grand theft of personal property of a value greater than \$400.00). These five
24 counts were subject to enhancements for violation of Penal Code section 186.11,
25 subdivision (a)(1), a felony, (committed multiple felonies, a material element which is fraud,
26 which involved a pattern of taking more than \$100,000.00); Penal Code section 12022.6,
27 subdivision (a)(1), a felony, (taking, damaging property of a value greater than \$50,000.00);
28 and Penal Code section 1203.045, subdivision (a), a felony, (taking, damaging property);

1 2. One count of violating Penal Code section 530.5, subdivision
2 (a), a felony, (identity theft);

3 3. One count of violating Penal Code section 1320, subdivision
4 (b), a felony, (failure to appear on own recognizance);

5 4. Five counts of violating Corporations Code section 25110, a
6 felony, (offer or sell securities without qualification); and,

7 5. Five counts of violating Corporations Code section 25401, a
8 felony, (offer or sell securities).

9
10 SECOND CAUSE FOR DISCIPLINE

11 (Dishonest Acts)

12 11. Respondent is subject to disciplinary action under Business and
13 Professions Code section 2878, subdivision (j) in that Respondent engaged in dishonest
14 acts, as set forth in paragraph 10, above. * * *

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1 PRAYER

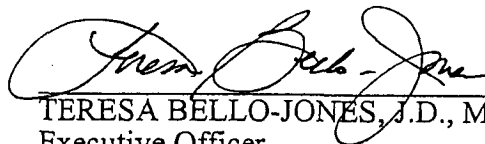
2 WHEREFORE, Complainant requests that a hearing be held on the matters
3 herein alleged, and that following the hearing, the Board of Vocational Nursing and
4 Psychiatric Technicians issue a decision:

5 1. Revoking or suspending Vocational Nurse License No. VN 207143,
6 issued to Valentin Garcia Lopez, Jr.;

7 2. Ordering Valentin Garcia Lopez, Jr. to pay the Board of Vocational
8 Nursing and Psychiatric Technicians the reasonable costs of the investigation and
9 enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

10 3. Taking such other and further action as deemed necessary and proper.
11

12 DATED: March 29, 2006
13

14 
15 TERESA BELLO-JONES, J.D., M.S.N., R.N.
16 Executive Officer
17 Board of Vocational Nursing and Psychiatric
18 Technicians
19 Department of Consumer Affairs
20 State of California
21 Complainant

**DECLARATION OF SERVICE BY CERTIFIED MAIL
AND
DECLARATION OF SERVICE BY FIRST CLASS MAIL**

Case Name: In the Matter of the Accusation Against:
Valentin Lopez, Jr.

Case No.: 6873

I declare:

I am employed in the County of Sacramento, California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 2535 Capitol Oaks Drive, Suite 205, Sacramento, California 95833-2945.

On March 27, 2007, I served the attached

COVER LETTER, DECISION DENYING PETITION FOR RECONSIDERATION,
ORDER DELAYING DECISION AND DECISION

in said cause, by placing a true copy thereof enclosed in two separate sealed envelopes with postage thereon fully prepaid by Certified Mail and First Class Mail, in the United States mail at Sacramento, California, addressed as follows:

NAME/ADDRESS

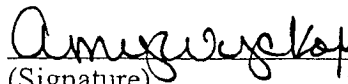
CERTIFIED MAIL NUMBER

Valentin Lopez, Jr.
CDC #V-98071
Valley View Conservation Camp #34
PO Box 8
Elk Creek, CA 95939-0008

7007 0220 0003 3875 6710

I declare under penalty of perjury the foregoing is true and correct, and that this declaration was executed at Sacramento, California on March 27, 2007.

Amy Wyckoff
(Typed Name)


(Signature)

cc: Karen J. Brandt, Administrative Law Judge
Geoffrey S. Allen, Deputy Attorney General